

1960

c 369 Settled Estates Act

Ontario

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CHAPTER 369

The Settled Estates Act

1.—(1) In this Act,

Interpre-
tation

- (a) "court" means the Supreme Court;
- (b) "income" includes rents and profits;
- (c) "land" includes incorporeal hereditaments and an undivided share in land;
- (d) "possession" includes receipt of income;
- (e) "settled estate" means land and all estates or interests in land that are the subject of a settlement;
- (f) "settlement" means a statute, deed, agreement, will or other instrument, or any number of such instruments, under or by virtue of which land or any estate or interest in land stands limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively. R.S.O. 1950, c. 357, s. 1 (1).

(2) All estates or interests in remainder or reversion not disposed of by the settlement, and reverting to a settlor or descending to the heir, or as upon an intestacy to the representative of a testator, shall be deemed to be estates coming to such settlor, heir or representative under or by virtue of the settlement.

Estates in
remainder
or reversion
not disposed
of by settle-
ment

(3) In determining what are settled estates within the meaning of this Act the court shall be governed by the state of facts and by the trusts or limitations of the settlement at the time of the settlement taking effect. R.S.O. 1950, c. 357, s. 1 (3, 4).

Determining
what are
settled
estates

2.—(1) The court, if it deems it proper and consistent with a due regard for the interests of all persons entitled under the settlement, and subject to the provisions and restrictions of this Act, may authorize leases of any settled estate or of any rights or privileges over or affecting any settled estate, for any purpose whatsoever, the following conditions being observed:

Power to
authorize
leases of
settled
estates

When lease
to take
effect

Best rent
to be
reserved

Exception

Reservation
of rent in
leases of
earth, coal,
stone or
mineral

Cutting
timber

Form of
lease

R.S.O. 1960,
c. 206

Agreements
for renewal

Special
covenants

1. Every such lease shall be made to take effect in possession at or within one year after the making thereof, and shall be for such term of years as the court shall direct, where the court is satisfied that it is beneficial to the inheritance to grant a lease.
 2. On every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half-yearly or oftener, and to be incident to the immediate reversion; but in the case of a mining lease, a repairing lease or a building lease a nominal rent or any smaller rent than the rent to be ultimately made payable may, if the court thinks fit so to direct, be made payable during all or any part of the first five years of the term of the lease.
 3. Where any such lease is of any earth, coal, stone or mineral a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested, when and so long as the person for the time being entitled to the receipt of the rent is a person who by reason of his estate or by virtue of any declaration in the settlement is entitled to work the earth, coal, stone, or mineral for his own benefit, one-fourth part of the rent, and in other cases three-fourth parts thereof, and in every such lease sufficient provision shall be made to ensure such application of that portion of the rent by the appointment of trustees or otherwise, as the court deems expedient.
 4. No such lease shall authorize the cutting of any timber or the felling of any trees except in the ordinary course of husbandry, or so far as shall in the judgment of the court be necessary, nor shall it be made without impeachment of waste.
 5. Every such lease shall be by deed, in duplicate, executed by the lessor and lessee, and shall be subject to the statutory right of re-entry for non-payment of rent contained in *The Landlord and Tenant Act*.
- (2) Any such lease may contain an agreement for the renewal or renewals thereof if the court thinks fit, and the court may determine the length of time for which the renewal or renewals, if any, may be made. R.S.O. 1950, c. 357, s. 2.
- 3.** Subject and in addition to the conditions hereinbefore mentioned every such lease shall contain such covenants, conditions and stipulations as the court deems expedient with reference to the special circumstances of the demise. R.S.O. 1950, c. 357, s. 3.

4. The power to authorize leases conferred by this Act Leases of parts of settled estates authorizes leases either of the whole or any part of the settled estate, and may be exercised from time to time. R.S.O. 1950, c. 357, s. 4.

5. A lease, whether granted in pursuance of this Act or Surrender and renewal otherwise, may be surrendered either for the purpose of obtaining a renewal of it or not, and the power to authorize leases conferred by this Act shall authorize a new lease of the whole or any part of the hereditaments comprised in any surrendered lease. R.S.O. 1950, c. 357, s. 5.

6. The power to authorize leases conferred by this Act Preliminary contracts extends to authorize preliminary contracts to grant such leases, and any of the terms of such contracts may be varied in the leases. R.S.O. 1950, c. 357, s. 6.

7. The power to authorize leases conferred by this Act may Mode in which leases may be authorized be exercised by the court either by approving of a particular lease or by ordering that the power of leasing in conformity with this Act, shall be vested in trustees in the manner herein-after mentioned. R.S.O. 1950, c. 357, s. 7.

8. Where application is made to the court either to approve What evidence to be produced on an application to authorize leases of a particular lease or to vest any power of leasing in trustees the court shall require the applicant to produce such evidence as it deems sufficient to enable it to ascertain the nature, value and circumstances of the estate and the terms and conditions on which leases thereof ought to be authorized. R.S.O. 1950, c. 357, s. 8.

9. Where a particular lease or contract for a lease has been Direction as to who shall be lessor approved by the court the court shall direct what person shall execute the same as lessor, and the lease or contract executed by such person shall take effect in all respects as if he had been at the time of the execution thereof absolutely entitled to the whole estate or interest that is bound by the settlement, and had immediately afterwards settled the same according to the settlement, and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the court directs. R.S.O. 1950, c. 357, s. 9.

10. Where the court deems it expedient that any general When powers of leasing may be vested in trustees power of leasing any settled estate conformable with this Act should be vested in trustees it may, by order, vest any such power accordingly either in the existing trustees of the settlement or in any other person or persons, and the power, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in

the settlement, and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the court directs, and in every such case the court may impose any conditions as to consents or otherwise on the exercise of the power and may also authorize the insertion of provisions in any such order for the appointment of new trustees from time to time for the purpose of exercising the power of leasing. R.S.O. 1950, c. 357, s. 10.

Conditions
that leases
be settled
by the
court

11. In any order under this Act for vesting any power of leasing in any trustees or other person or persons no conditions shall be inserted requiring that the lease thereby authorized shall be submitted to or be settled by the court or be made conformable with a model lease, unless the person applying for the order desires to have any such condition inserted or it appears to the court that there is some special reason for the insertion of such a condition. R.S.O. 1950, c. 357, s. 11.

Striking
out such
conditions

12. In any order, whether under this Act or under any other Act, in which any such condition has been inserted, any person interested may apply to the court to alter the order by striking out the condition, and the court may alter the order accordingly, and the order so altered has the same validity as if it had originally been made in its altered state; but the court may decline to act under this provision in any case in which it appears to the court that for any special reason such a condition is necessary or expedient. R.S.O. 1950, c. 357, s. 12.

Powers of
court:

13.—(1) The court, if it deems it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act, may,

to authorize
mortgages
for purpose
of repairs,
etc.

(a) from time to time authorize a mortgage of the whole or any part of any settled estate for the purpose of raising money to repair, rebuild or alter any existing building upon the estate, or otherwise to build upon or improve the same; or for the purpose of raising money to pay off and discharge wholly or in part any encumbrance thereon;

to authorize
sales of
settled
estates and
of timber

(b) from time to time authorize a sale of the whole or any part of any settled estate or of any easement, right or privilege, of any kind, over or in relation to the same, or of any timber not being ornamental timber growing on the settled estate;

to sanction
proceedings
for protec-
tion of estate

(c) sanction any action, defence, petition to the Legislature or other proceeding appearing to the court necessary for the protection of any settled estate, and

order that all or any part of the costs and expenses in relation thereto be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estate, or be raised and paid out of the rents and profits of the settled estate, or out of any money or investment representing money liable to be laid out in the purchase of land to be settled in the same manner as the settled estate, or out of the income of such money or investment, or out of any accumulations of rents, profits or income.

(2) Such mortgage shall be authorized where the court is of the opinion that the interests of the estate or any part thereof or of the persons entitled to the estate or any part thereof require, or will be substantially promoted by such mortgage.

(3) Every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the court is required in the sale of land under an order of the court. R.S.O. 1950, c. 357, s. 13.

14. Where land is sold for building purposes the court may allow the whole or any part of the consideration to be a rent issuing out of the land, which may be secured and settled in such manner as the court approves. R.S.O. 1950, c. 357, s. 14.

15. On any sale of land, any earth, coal, stone or mineral may be excepted and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants or submit to any restrictions that the court deems advisable. R.S.O. 1950, c. 357, s. 15.

16.—(1) The court, if it deems it proper and consistent with a due regard for the interests of all persons entitled under the settlement and subject to the provisions and restrictions of this Act, may from time to time direct that any part of any settled estate be laid out for streets, roads, paths, squares, gardens, or other open spaces, or for sewers, drains or watercourses, either to be dedicated to the public or not, and may direct that the parts so laid out shall, subject to this Act, remain vested in the trustees of the settlement or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to such purposes in all respects and with such provisions for the appointment of new trustees when required as the court deems advisable.

(2) Where any part of any settled estate is directed to be laid out for such purposes the court may direct that open spaces, sewers, drains or watercourses, including all necessary and proper fences, pavings, connections and other works incidental thereto, be made and executed, and that all or any

part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estate, or be raised and paid out of the rents and profits of the settled estate or any part thereof, or out of any money or investments representing money liable to be laid out in the purchase of land to be settled in the same manner as the settled estate, or out of the income of such money or investments, or out of any accumulations of rents, profits or income, and the court may also give such directions as it deems advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens or other open spaces, sewers, drains or watercourses or other works out of any such rents, profits, income or accumulations during such period as the court deems advisable.

Restrictions

R.S.O. 1960,
cc. 348, 204,
249, 296

(3) The powers hereby granted shall be exercised subject to *The Registry Act, The Land Titles Act, The Municipal Act, The Planning Act* and any other Act dealing with the subdivision of land and the registration of plans. R.S.O. 1950, c. 357, s. 16.

Directions
as to execu-
tion of deeds

17. On every sale, mortgage or dedication made under the authority of this Act the court may direct what person shall execute the deed of conveyance or mortgage, and the deed or mortgage executed by such person shall take effect as if the settlement had contained a power enabling such person to effect the sale, mortgage or dedication, and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the court directs. R.S.O. 1950, c. 357, s. 17.

Who may
apply for
exercise of
powers

18.—(1) Any of the persons authorized by section 32 to make a demise of a settled estate, and any person entitled to the possession or to the receipt of the rents and profits of a settled estate for any greater estate than the estate mentioned in that section and the assigns of any such person may apply to the court to exercise the powers conferred by this Act.

Where
jointly
entitled

(2) Where two or more persons are entitled as tenants in common, joint tenants or co-parceners, any or either of them may make the application. R.S.O. 1950, c. 357, s. 18.

Consent to
application

19.—(1) Subject to the provisions of this section, every application to the court under this Act shall be made with the concurrence or consent of all those in existence having any estate or beneficial interest under the settlement and of all trustees having any estate or interest on behalf of any unborn child. 1956, c. 84, s. 2.

Notice to
persons
who do not
consent or
concur

(2) Where the concurrence or consent of any person mentioned in subsection 1 has not been obtained notice shall be given to such person in such manner as the court directs,

requiring him to notify within a time to be specified in the notice whether he assents to or dissents from the application or submits his rights or interests, or so far as they may be affected by the application, to be dealt with by the court, and every notice shall specify to whom and in what manner the notification is to be delivered or left.

(3) If no notification is delivered or left in accordance with the notice and within the time thereby limited the person to or for whom the notice has been given or left shall be deemed to have submitted his rights and interests to be dealt with by the court. Effect of non-reply

(4) Where the concurrence or consent of any such person has not been obtained, and if such person cannot be found or if it is uncertain whether he is living or dead, or if it appears to the court that the notice cannot be given to him without expense disproportionate to the value of the subject matter of the application, the court if it thinks fit, either on the ground of the rights or interests of such person being small or remote or being similar to the rights or interests of any other person or on any other ground, may by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the court. When court may dispense with notice

(5) An order may be made notwithstanding that the concurrence or consent of any such person has not been obtained or has been refused, but the court, in considering the application, shall have regard to the number of persons who concur in or consent to the application and who dissent therefrom or who submit or are to be deemed to submit their rights or interests to be dealt with by the court, and to the estates or interests that such persons respectively have or claim to have in the estate, and every order made upon such application has the same effect as if all such persons had been consenting parties thereto. When court may dispense with consent

(6) The court may give effect to any application subject to, and so as not to affect the rights, estate or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the court, or whose rights, estate or interest ought in the opinion of the court to be excepted. R.S.O. 1950, c. 357, s. 19 (2-6). Order saving rights of non-consenting parties

20. Notice of any application under this Act shall be served on all trustees who are seized or possessed of any estate in trust for any person whose consent to or concurrence in the application is hereby required, and on any other persons who Notice to trustees, etc.

in the opinion of the court ought to be so served, unless the court dispenses with such notice. R.S.O. 1950, c. 357, s. 20.

When notice of application to be given in the newspapers

21. Notice of any application, if the court so directs but not otherwise, shall be published in such newspapers as the court directs, and any person, whether interested in the estate or not, may be heard in opposition to or in support of the application, and the court may permit such person to appear and be heard in opposition to or in support of the application on such terms as to costs or otherwise and in such manner as it thinks fit. R.S.O. 1950, c. 357, s. 21.

Where a similar application has been rejected by the Legislature

22. The court shall not grant an application where the applicant, or any person entitled, has previously applied to the Legislature for a private Act to effect the same or a similar object, and such application has been rejected on its merits, or reported against by the judges to whom the Bill was referred. R.S.O. 1950, c. 357, s. 22.

Application of money arising from sales, etc.

23. All money to be received on any sale effected under the authority of this Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone or mineral may, if the court thinks fit, be paid to any trustees of whom it shall approve, otherwise the same be paid into court, and such money shall be applied as the court from time to time directs to one or more of the following purposes:

1. The payment of any costs that the court orders to be paid.
2. The discharge of any encumbrance affecting the land in respect of which the money was paid, or affecting any other land subject to the same uses or trusts.
3. The purchase of other land to be settled in the same manner as the land in respect of which the money was paid.
4. The payment of the expenses connected with any buildings, repairs, rebuilding, alterations or improvements authorized to be made upon the settled estate.
5. The payment to any person becoming absolutely entitled. R.S.O. 1950, c. 357, s. 23.

Application of money in certain cases without application to court

24. The application of the money if the court so directs may be made by the trustees to whom the court has authorized the money to be paid, without any application to the court, or upon an order of the court upon the petition of the person who would be entitled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land. R.S.O. 1950, c. 357, s. 24.

25. Until the money can be so applied the interest accruing thereon shall be paid as the court directs to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land. R.S.O. 1950, c. 357, s. 25.

Payment of interest

26. Where any purchase money paid into court or to trustees under this Act has been paid in respect of a lease for a life or lives or years, or for a life or lives and years, or of any estate in land less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, the court may, on the petition of any person interested in the money, order that the interest that accrues thereon be paid in such manner as the court considers will give to the parties interested in the money the same benefit therefrom as they might lawfully have had from the lease, estate or reversion in respect of which the money has been paid, or as near thereto as may be. R.S.O. 1950, c. 357, s. 26.

Application of money in respect of leases or reversions

27.—(1) The court may exercise any of the powers conferred on it by this Act whether the court has already exercised any of such powers in respect of the same property or not; but no such powers shall be exercised if any express declaration that they shall not be exercised is contained in the settlement.

Court may exercise powers repeatedly

(2) The circumstance that the settlement contains powers to effect similar purposes does not preclude the court from exercising any of the powers conferred by this Act if it thinks that the powers contained in the settlement ought to be extended. R.S.O. 1950, c. 357, s. 27.

Notwithstanding express powers

28. Nothing in this Act empowers the court to authorize any lease, mortgage, sale or other act beyond the extent to which, in the opinion of the court, the same might have been authorized in and by the settlement by the settlor. R.S.O. 1950, c. 357, s. 28.

Extent of powers

29. After the completion of any lease, mortgage or sale, or other act under the authority of the court and purporting to be in pursuance of this Act, the same is not invalidated on the ground that the court was not empowered to authorize the same. R.S.O. 1950, c. 357, s. 29.

Validity of acts

30.—(1) An order of the court under jurisdiction conferred by this Act is not, as against a lessee, mortgagee or purchaser, invalidated on the ground of want of jurisdiction or of want of any concurrence, consent, notice or service, whether he had or had not notice of any such want.

Orders of court conclusive

Scope of
section

(2) This section has effect with respect to any lease, mortgage, sale or other act under the authority of the court and purporting to be in pursuance of this Act, or to be in pursuance of any former Act, notwithstanding any exception in any former Act. R.S.O. 1950, c. 357, s. 30.

Costs

31. The court may order that any costs or expenses of any persons of and incident to any application under this Act shall be a charge on the land that is the subject of the application, or on any other land included in the same settlement and subject to the same limitations, or may direct the same to be paid out of the corpus or income of any fund realized by the sale, mortgage or lease of such estate under this Act, and the court may also direct that the costs and expenses, to be taxed and paid as the court directs, shall be raised by a sale or mortgage of a sufficient part of such land or out of the rents or profits thereof. R.S.O. 1950, c. 357, s. 31.

Power to
make leases
for 21 years

32.—(1) The following persons, unless the settlement contains an express declaration that it is not lawful for them to make the demise, may from time to time and without any application to the court, except as hereinafter mentioned, demise the settled estate or any part thereof for any term, not exceeding twenty-one years, to take effect in possession at or within one year next after the making thereof:

1. A person entitled to the possession or to the receipt of the rents and profits of any settled estate, for an estate for life or for a term of years determinable with any life or lives or for any greater estate not holding merely under a lease at a rent.
2. A tenant in fee simple with an executory limitation, gift or disposition over on failure of his issue or in any other event.
3. A tenant for years determinable on life not holding merely under a lease at a rent.
4. A tenant for the life of another not holding merely under a lease at a rent.
5. A tenant for his own or any other life or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate or by conditional limitation or otherwise, or to be defeated by an executory limitation, gift or disposition over, or is subject to a trust for accumulation of income for payment of debts or any other purpose.

6. A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life whether subject to expenses of management or not or until sale of the land or until forfeiture of his interest therein on bankruptcy or other event. R.S.O. 1950, c. 357, s. 32 (1); 1956, c. 84, s. 3.

(2) The powers conferred by subsection 1 may be exercised by a person entitled to the possession or to the receipt of the rents and profits of unsettled land as tenant by the curtesy or tenant in dower. ^{Curtesy and dower}

(3) Any of the persons empowered by subsections 1 and 2 to make a demise may also make, ^{Additional powers}

- (a) a lease for giving effect to a contract entered into by any of his predecessors in title for making a lease that, if made by the predecessor, would have been binding on the successors in title; and
- (b) a lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled estate; and
- (c) a lease for confirming, as far as may be, a previous lease being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted under this Act, or otherwise as the case may require.

(4) Where two or more persons are under the same settlement or otherwise entitled in possession to concurrent estates for life, or are concurrently entitled to the possession or receipts of the rents and profits as in subsection 1 mentioned, they shall, for the purposes of this section, act concurrently. ^{Joint action}

(5) Every demise made under this section shall be by deed in duplicate, and for the best rent that can reasonably be obtained, which rent shall be incident to the immediate reversion and shall be made payable half-yearly or oftener. ^{Form of lease}

(6) Such demise shall not be made without impeachment of waste and shall not authorize the cutting of any timber or felling of any trees except in the ordinary course of husbandry, and shall contain a covenant for payment of the rent and such other usual and proper covenants as the lessor thinks fit, and shall be subject to the statutory right of re-entry for non-payment of rent in *The Landlord and Tenant Act*. R.S.O. 1950, c. 357, s. 32 (2-6). ^{Conditions R.S.O. 1960, c. 206}

Against
whom
leases
valid

33.—(1) Every demise of a settled estate authorized by section 32 is valid against the person granting the demise and all other persons entitled to estates subsequent to his estate under or by virtue of the same settlement.

Idem

(2) Every demise of unsettled land by a tenant by the curtesy or by a tenant in dower is valid against the person granting the demise and all other persons entitled to an estate subsequent to the estate of such tenant. R.S.O. 1950, c. 357, s. 33.

Provisions
as to persons
under dis-
ability

34. All powers given by this Act, and all applications to the court under this Act and consents to and notifications respecting them, may be executed, made or given by, and all notices under this Act may be given to committees on behalf of mentally incompetent persons, and by or to trustees or assignees of the property of bankrupts, debtors in liquidation or insolvents, and the Official Guardian or any other guardian *ad litem* may consent to, and give notifications respecting such applications, and give all notices under this Act on behalf of any infant or person of unsound mind not so found; but in the case of infants or mentally incompetent persons, or persons of unsound mind not so found, all consents to or notifications or notices respecting any application so given by any committee or official guardian or other guardian *ad litem* are subject to the approbation of the court. R.S.O. 1950, c. 357, s. 34.

Married
women

35. A married woman may make or consent to or oppose any application whether she is or is not of full age. R.S.O. 1950, c. 357, s. 35.

No obliga-
tion to make
or consent
to applica-
tion

36. Nothing in this Act imposes any obligation on any person to make or consent to any application to the court or to exercise any power. R.S.O. 1950, c. 357, s. 36.

Tenants for
life, etc., to
be deemed
entitled not
withstand-
ing encum-
brances

37. A person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of an estate although his estate may be charged or encumbered, either by himself or by the settlor or otherwise, to any extent; but the estates or interests of the persons entitled to the charge or encumbrance are not affected by the acts of such persons unless they concur therein. R.S.O. 1950, c. 357, s. 37.

Powers
conferred by
other Acts

38. Nothing in this Act interferes with the exercise of any powers to authorize or grant leases conferred by any other statute. R.S.O. 1950, c. 357, s. 38.
